

Remarks

The present remarks are in response to the Rejection dated May 20, 2005, in which the Examiner rejected claims 24-46. Applicant has amended claims 24, 34, and 42. The Applicant respectfully responds to the Examiner's Detailed Action and requests the Examiner place all claims detailed in the application in a state of allowance.

A. Priority and Specification

Applicant submitted a continuation patent application. The Examiner notes that this continuation patent application may constitute a CIP, however, the Examiner does not provide a particular basis for this statement. Applicant is unaware of any new matter that has been added to the continuation. The only possible reference to "new matter" may be the improper numbering on page 8, line 11 of the patent application, which is a simple editorial marking. Applicant requests further clarification as to whether this is the "alteration" that affects priority. If this is the alteration that affects priority, Applicant respectfully submits that it would be easier to acknowledge this as an editorial comment that was unintentionally submitted, and that a substitute specification may be submitted. Further clarification is requested.

Regarding the Abstract identified by the Examiner being, the Applicant submitted a new Abstract in May 14, 2001 Preliminary Amendment. The Applicant is not sure if the Examiner is referring to the Abstract in the filed patent application or the Abstract in the Preliminary Amendment. Thus, Applicant is not sure which Abstract to submit. Additionally, the format for the Abstract in the

May 14, 2001 Preliminary Amendment was consistent with the rules for amendment practice in 2001, and was accepted by the USPTO. Applicant is unaware of a need to modify the Abstract to conform with current rules for Amendment practice, however, if the Applicant is referring to this Abstract in the Preliminary Amendment, then Applicant will submit the Abstract on a separate sheet as requested by the Examiner.

B. Support for Claim Amendments

The Examiner shall appreciate that support for the claim amendments is provided in the patent application. In particular the patent application is directed to processing digital data comprising digital video, internet data, and telephone data as shown in *inter alia* FIG. 6 of the patent application.

Each of the head end encoders comprise a QAM modulator as described in Page 9: line 29-35.

The head end encoders receive digital data that is formatted as Ethernet data with internet protocol that is converted to a MPEG-2 bit stream that is modulated by the QAM modulator as described in Page 9: line 26 -36.

The addressable encoder is configured to specify a head end encoder that generates the MPEG-2 bit stream that is modulated by the QAM modulator as described in Page 9: line 19-36.

The return path demodulator receives upstream information and communicates the upstream information to the addressable controller as described in Page 9: line 9-25.

C. Rejection of Claims under 35 USC§102

Claims 24 and 31 have been rejected by the Examiner under 35 USC § 102 as being anticipated by US Patent 6,147,714 to Terasawa et al. (hereinafter referred to as "Terasawa"). The Applicant respectfully disagrees; however, in order to expedite the prosecution of the present application, Applicant has amended independent claims 24 as discussed below, and cancelled claim 31.

Regarding independent claims 24, the Applicant has amended the claim to include the limitations of processing digital data comprising digital video, internet data, and telephony data. Additionally, the Applicant has amended claims 24 to include a QAM modulator for generating a QAM output. Terasawa fails to teach these limitations, and thus Applicant respectfully submits that Applicant has overcome the anticipation rejection.

D. Rejection of Claims Under 35 USC§103

The Applicant disagrees with the Examiner's 103 arguments and reserves the right to make arguments at a later time. However to expedite the prosecution of this patent application, the Applicant has amended the claims. In view of the claim amendments, the Applicant respectfully submits that the Examiner has not satisfied the *prima facie* obviousness requirements. As stated in Section 2143 of the MPEP:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art references (or references when combined) must teach or suggest all the claim limitations.

The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in the applicant's disclosure. Section 2143, MPEP Rev. 2.0, May 2004, pg. 2100-129.

For example, Terasawa is directed to an electronic programming guide in a wireless environment. The Terasawa switcher only receives video data that the Examiner states is an "inherent" first protocol.

With respect to Gotwald and Terasawa, there is no teaching of each head end encoder comprising a QAM modulator for generating QAM output. Additionally, Gotwald fails to teach processing digital data that is formatted as Ethernet with internet protocol that is converted to a MPEG-2 bit stream.

Although Dyer teaches a return path, Dyer fails to teach an addressable controller configured to specify a head end encoder that generates the MPEG-2 bit stream and that receives the upstream information.

Thus, in view of the claim amendments, Applicant respectfully submits that the amended claims include new limitations that are not taught in the cited references, the thus the Examiner has failed to satisfy the prima facie elements for an obviousness rejection.

E. Conclusion

For all the forgoing reasons of allowance of amended claims 24-46 is respectfully requested.

Respectfully Submitted,



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